



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FIRST CLASS MAIL

JUL 27 2011

Mark L. Ornstein, Esq.
Killgore, Pearlman, Stamp,
Ornstein & Squires, P.A.
2 South Orange Ave., 5th Floor
Orlando, Florida 32801
Email: mlornstein@kpsos.com

RE: MUR 6054
Gary J. Scarbrough

Dear Mr. Ornstein:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Gary J. Scarbrough, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). See Letter from Kathleen M. Guith dated February 14, 2011; Letter from Michael Columbo dated March 9, 2011; Letters from Mark L. Ornstein dated February 25 and March 22, 2011. On June 28, 2011, the Commission found reason to believe that Mr. Scarbrough violated 2 U.S.C. § 441f, a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34986 (June 15, 2011).

We look forward to your response.

On behalf of the Commission,



Cynthia L. Bauerly
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

In the matter of)
 Gary J. Scarbrough) MUR 6054

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities.

II. INTRODUCTION

This matter concerns campaign contributions received by Vern Buchanan for Congress ("VBFC") during the 2008 election cycle that were reimbursed with the funds of a car dealership in which Representative Vernon Buchanan ("Buchanan") holds, or previously held, a majority ownership interest, specifically, the reimbursement of \$18,400 in contributions to VBFC by 10-2002 LLC f/k/a Suncoast Ford ("Suncoast Ford") by the operating partner at Suncoast Ford, Gary J. Scarbrough, in violation of 2 U.S.C. § 441f.

III. ANALYSIS

There is evidence that Scarbrough directed the Suncoast Ford controller to reimburse contributions to VBFC, including Scarbrough's, using dealership funds. The Federal Election Campaign Act of 1971, as amended ("Act"), provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. Section 441f prohibits providing money to others to effect contributions in their names without disclosing the source of the money to the recipient candidate or committee at the time the contribution is made, and it applies to individuals as well as

1 incorporated or unincorporated entities. 11 C.F.R. § 110.4(b)(2); 2 U.S.C. § 431(11) (term
2 “person” includes partnerships and corporations). This prohibition also applies to any person
3 knowingly helping or assisting any person in making a contribution in the name of another,
4 including “those who initiate or instigate or have some significant participation in a plan or
5 scheme to make a contribution in the name of another[.]” 11 C.F.R. § 110.4(b)(1)(iii);
6 Explanation and Justification for 11 C.F.R. § 110.4(b)(1)(iii) at 54 Fed. Reg. 34,105 (1989).

7 There is evidence that Scarbrough made contributions in the name of another,
8 specifically, that Scarbrough directed the Suncoast Ford controller, Kenneth Lybarger, to write a
9 personal contribution check to VBFC and issue reimbursement checks from Suncoast Ford’s
10 account to Scarbrough, Harold H. Glover, III, M. Osman Ally, and himself. VBFC disclosed
11 that Scarbrough, Glover, Ally, and Lybarger each contributed \$4,600 in March of 2007. There is
12 evidence that the entries in Suncoast Ford’s ledger for the reimbursements were subsequently
13 questioned by Ed Schmid, an assistant corporate controller of the Buchanan Automotive Group
14 (“BAG”). There is evidence that Lybarger explained to Schmid that he was directed to
15 reimburse the contributions. On June 18, 2007, VBFC refunded all \$18,400 of the reimbursed
16 Suncoast Ford employee contributions. There is evidence that when Lybarger received the
17 refund from VBFC, he wrote a personal check repaying Suncoast Ford for reimbursement.

18 There is also evidence that Ed Schmid, in the course of his work for the BAG, reviewed
19 the books of Suncoast Ford and noticed several unusual disbursements to employees, and that
20 either Lybarger or Scarbrough told him that the disbursements were reimbursements for
21 contributions to VBFC. There is evidence that Schmid notified one of his superiors at BAG of
22 what he had found.

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1 Scarbrough testified in a deposition that Buchanan asked him "a few times" to contribute
2 to VBFC, Scarbrough Deposition Tr. at 13, but that he did not remember whether Buchanan also
3 asked him to solicit Suncoast Ford employees to contribute to VBFC. *Id.* at 15. Scarbrough also
4 testified that he did not remember if he asked his employees to contribute to VBFC, but he "may
5 have" done so. *Id.* at 16, 19. Scarbrough admitted that he "had some checks cut back to some
6 people for their contributions to Vern's campaign, and shortly after that, we found out that we
7 couldn't do that." *Id.* at 31. Scarbrough also testified that he "probably" asked someone to write
8 the checks, and the purpose of issuing the Suncoast Ford checks to the contributors was "[t]o
9 refund the money that they had contributed to the campaign." *Id.* Scarbrough testified that he
10 intended to repay Suncoast Ford for its reimbursement of his contribution to VBFC but had not
11 done so before his contribution was refunded. *Id.* at 36. After the contributions and
12 reimbursements were made, a person from Buchanan's business organization named "Ed," who
13 periodically reviewed Suncoast Ford's accounting, informed Scarbrough that he could not
14 reimburse contributions and that the contributions had to be refunded. *Id.* at 28, 32.

15 Scarbrough testified that he did not remember: (a) whose idea it was to reimburse
16 Suncoast Ford employee contributions to VBFC; (b) whether he did it of his own accord; or
17 (c) whether someone asked him to have his employees' contributions reimbursed. *Id.* at 33, 39.

18 In response to the Commission's February 14, 2011, notification letter, Scarbrough stated
19 that he "discovered a mistake was made when the contributions ... were reimbursed" and that
20 "[u]pon learning of the mistake, VBFC was notified and [VBFC] took immediate corrective
21 action by refunding the contributions to each individual" within three months of the
22 reimbursement of the contributions and before the FEC's involvement. Scarbrough Response
23 at 1. Scarbrough's Response, therefore, does not appear to contest the allegation set forth in the

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1 notification letter, which allegation was restated in his Response, that Scarbrough directed
2 Lybarger to reimburse the contributions using Suncoast Ford funds. *See* Scarbrough Response
3 at 1.

4 Consequently, 10-2002 LLC f/k/a Suncoast Ford made contributions totaling \$18,400 in
5 the names of Gary J. Scarbrough, Kenneth Lybarger, Harold H. Glover, III, and M. Osman Afly.
6 Because Scarbrough, who was the operating partner at Suncoast Ford, knowingly permitted his
7 name to be used to effect a contribution in the name of another, and assisted Suncoast Ford in
8 making \$18,400 in contributions in the names of others by directing his subordinate, Lybarger, to
9 issue checks from a Suncoast account to reimburse the contributions, there is reason to believe
10 that Gary J. Scarbrough violated 2 U.S.C. § 441f.

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